

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ERNEST MURPHY,

16 CIV 4415 (AJN)(JLC)

Plaintiff,

-against-

CITY OF NEW YORK et al.,

Defendants.

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**DEFT DEALLIE'S
ANSWER WITH
CROSS-CLAIMS**

Defendant **C.O. DAIN DEALLIE** (öDefendantö) by his attorneys, **KOEHLER & ISAACS LLP**, as and for an Answer with Cross-Claims to the First Amended Complaint, sets forth, upon information and belief, as follows:

AS AND FOR A RESPONSE TO PRELIMINARY STATEMENT

Defendant denies any wrongdoing alleged in this section of the First Amended Complaint and refers all questions of law to the Honorable Court.

RESPONSE TO NATURE OF ACTION

1. The allegations contained in paragraph ö1ö of the First Amended Complaint do not require a response from the Defendant and all questions of law are referred to this Honorable Court.

RESPONSE TO JURISDICTION AND VENUE

2. The allegations contained in paragraph ö2ö of the First Amended Complaint do not require a response from the Defendant and all questions of law are referred to this Honorable Court.

3. The allegations contained in paragraph ö3ö of the First Amended Complaint do not require a response from the Defendant and all questions of law are referred to this Honorable

Court.

4. The allegations contained in paragraph 84 of the First Amended Complaint do not require a response from the Defendant and all questions of law are referred to the Honorable Court.

AS AND FOR A RESPONSE TO JURY DEMAND

5. The allegations contained in paragraph 85 of the First Amended Complaint do not require a response from the Defendant.

AS AND FOR A RESPONSE TO PARTIES

6. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 86 of the First Amended Complaint and refers all questions of law to this Honorable Court.

7. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 87 of the First Amended Complaint, refers all questions of law to this Honorable Court but admits the City of New York is a municipality.

8. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 88 of the First Amended Complaint and refers all questions of law to this Honorable Court.

9. Defendant denies in the form alleged the truth of the allegations contained in paragraph 89 of the First Amended Complaint, refers all questions of law to this Honorable Court but admits he worked as a correction officer at all times relevant to the First Amended Complaint.

10. Defendant denies in the form alleged the allegations contained in paragraph 90 of the First Amended Complaint and refers all questions of law to this Honorable Court.

11. Defendant denies in the form alleged the allegations contained in paragraph ö11ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

RESPONSE TO STATEMENT OF FACTS

12. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö12ö of the First Amended Complaint, as it relates to the plaintiff&s incarceration, denies any wrongdoing as it relates to him and refers all questions of law to this Honorable Court.

13. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö13ö of the First Amended Complaint.

14. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö14ö of the First Amended Complaint as it relates to other parties, denies any wrongdoing as it relates to him and refers all questions of law to this Honorable Court.

15. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö15ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

16. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö16ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

17. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö17ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

18. Defendant denies the allegations contained in paragraph ö18ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

19. Defendant denies the allegations contained in paragraph ö19ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

20. Defendant denies the allegations contained in paragraph ö20ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

21. Defendant denies the allegations contained in paragraph ö21ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

22. Defendant denies the allegations contained in paragraph ö22ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

23. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö23ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

24. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö24ö of the First Amended Complaint as it relates to other defendants, denies any wrongdoing as it relates to him and refers all questions of law to this Honorable Court.

25. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö25ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

26. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö26ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

27. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö27ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

28. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö28ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

29. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö29ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

30. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö30ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

31. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö31ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

32. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö32ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

33. Defendant denies the legal conclusion set forth in paragraph ö33ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

34. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö34ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

35. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö35ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

36. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö36ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

37. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö37ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

38. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö38ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

39. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö39ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

40. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö40ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

41. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö41ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

42. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö42ö of the First Amended Complaint and refers all

questions of law to this Honorable Court.

43. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö43ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

44. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö44ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

45. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö45ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

46. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö46ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

47. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö47ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

48. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö48ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

49. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö49ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

50. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö50ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

51. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö51ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

52. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö52ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

53. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö53ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

54. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö54ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

55. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö55ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

56. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö56ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

57. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö57ö of the First Amended Complaint and refers all

questions of law to this Honorable Court.

58. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö58ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

59. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö59ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

60. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö60ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

61. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö61ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

62. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö62ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

63. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö63ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

64. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö64ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

65. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö65ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

66. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö66ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

67. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö67ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

68. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö68ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

69. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö69ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

70. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö70ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

71. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö71ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

72. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö72ö of the First Amended Complaint and refers all

questions of law to this Honorable Court.

73. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö73ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

74. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö74ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

75. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö75ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

76. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö76ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

77. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö77ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

78. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö78ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

79. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö79ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

80. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö80ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

81. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö81ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

82. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö82ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

83. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö83ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

84. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö84ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

85. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö85ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

86. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö86ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

87. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö87ö of the First Amended Complaint and refers all

questions of law to this Honorable Court.

88. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶88 of the First Amended Complaint and refers all questions of law to this Honorable Court.

89. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶89 of the First Amended Complaint and refers all questions of law to this Honorable Court.

90. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶90 of the First Amended Complaint and refers all questions of law to this Honorable Court.

91. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶91 of the First Amended Complaint and refers all questions of law to this Honorable Court.

92. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶92 of the First Amended Complaint and refers all questions of law to this Honorable Court.

93. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶93 of the First Amended Complaint and refers all questions of law to this Honorable Court.

94. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶94 of the First Amended Complaint and refers all questions of law to this Honorable Court.

95. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö95ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

96. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö96ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

97. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö97ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

98. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö98ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

99. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö99ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

100. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö100ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

101. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö101ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

102. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö102ö of the First Amended Complaint and refers

all questions of law to this Honorable Court.

103. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶103 of the First Amended Complaint and refers all questions of law to this Honorable Court.

104. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶104 of the First Amended Complaint and refers all questions of law to this Honorable Court.

105. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶105 of the First Amended Complaint as it relates to other defendants, denies any wrongdoing as it relates to answering defendant and refers all questions of law to this Honorable Court.

106. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶106 of the First Amended Complaint as it relates to other defendants, denies any wrongdoing as it relates to answering defendant and refers all questions of law to this Honorable Court.

107. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶107 of the First Amended Complaint as it relates to other defendants, denies any wrongdoing as it relates to answering defendant and refers all questions of law to this Honorable Court.

108. Defendant denies the legal conclusion contained in paragraph ¶108 of the First Amended Complaint and refers all questions of law to this Honorable Court.

109. Defendant denies in the form alleged the truth of the allegations contained in paragraph ¶109 of the First Amended Complaint and refers all questions of law to this Honorable

Court.

110. Defendant denies the legal conclusion contained in paragraph ¶110 of the First Amended Complaint and refers all questions of law to this Honorable Court.

111. Defendant denies the legal conclusion contained in paragraph ¶111 of the First Amended Complaint and refers all questions of law to this Honorable Court.

AS AND FOR A RESPONSE TO FIRST CLAIM
(42 U.S.C. §1983)

112. Defendant repeats, reiterates and re-alleges the responses to the allegations set forth in paragraphs 1 through ¶110 above with the same force and effect as if fully set forth herein.

113. Defendant denies the allegations contained in paragraph ¶113 of the First Amended Complaint and refers all questions of law to this Honorable Court.

114. Defendant denies the allegations contained in paragraph ¶114 of the First Amended Complaint and refers all questions of law to this Honorable Court.

115. Defendant denies the allegations contained in paragraph ¶115 of the First Amended Complaint and refers all questions of law to this Honorable Court.

AS AND FOR A RESPONSE TO SECOND CLAIM
(First Amended Retaliation)

116. Defendant repeats, reiterates and re-alleges the responses to the allegations set forth in paragraphs ¶1 through ¶115 above with the same force and effect as if fully set forth herein.

117. Defendant denies the allegations contained in paragraph ¶117 of the First Amended Complaint and refers all questions of law to this Honorable Court.

118. Defendant denies the legal conclusion contained in paragraph ¶118 of the First Amended Complaint and refers all questions of law to this Honorable Court.

119. Defendant denies the allegations contained in paragraph ¶119 of the First Amended Complaint and refers all questions of law to this Honorable Court.

120. Defendant denies the legal conclusions contained in paragraph ¶120 of the First Amended Complaint and refers all questions of law to this Honorable Court.

121. Defendant denies the legal conclusion contained in paragraph ¶121 of the First Amended Complaint and refers all questions of law to this Honorable Court.

122. Defendant denies the legal conclusion contained in paragraph ¶122 of the First Amended Complaint and refers all questions of law to this Honorable Court.

123. Defendant denies the legal conclusion contained in paragraph ¶123 of the First Amended Complaint and refers all questions of law to this Honorable Court.

AS AND FOR A RESPONSE TO THIRD CLAIM
(Excessive Force)

124. Defendant repeats, reiterates and re-alleges the responses to the allegations set forth in paragraphs ¶1 through ¶123 above with the same force and effect as if fully set forth herein.

125. Defendant denies the truth of the allegations contained in paragraph ¶125 of the First Amended Complaint and refers all questions of law to this Honorable Court.

126. Defendant denies the legal conclusions contained in paragraph ¶126 of the First Amended Complaint and refers all questions of law to this Honorable Court.

127. Defendant denies the legal conclusions contained in paragraph ¶127 of the First Amended Complaint and refers all questions of law to this Honorable Court.

AS AND FOR A RESPONSE TO FOURTH CLAIM
(False Arrest & Malicious Prosecution)

128. Defendant repeats, reiterates and re-alleges the responses to the allegations set forth in paragraphs ö1ö through ö127ö above with the same force and effect as if fully set forth herein.

129. Defendant denies the truth of the allegations contained in paragraph ö129ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

130. Defendant denies the legal conclusion set forth in paragraph ö130ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

131. Defendant denies the legal conclusions contained in paragraph ö131ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

132. Defendant denies the legal conclusions contained in paragraph ö132ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

AS AND FOR A RESPONSE TO FIFTH CLAIM
(Denial of Constitutional Right to Fair Trial)

133. Defendant repeats, reiterates and re-alleges the responses to the allegations set forth in paragraphs ö1ö through ö132ö above with the same force and effect as if fully set forth herein.

134. Defendant denies the allegations contained in paragraph ö134ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

135. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö135ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

136. Defendant denies the allegations contained in paragraph ö136ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

137. Defendant denies the legal conclusions contained in paragraph ö137ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

138. Defendant denies the legal conclusions contained in paragraph ö138ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

AS AND FOR A RESPONSE TO SIXTH CLAIM
(Equal Protection)

139. Defendant repeats, reiterates and re-alleges the responses to the allegations set forth in paragraphs ö1ö through ö138ö above with the same force and effect as if fully set forth herein.

140. Defendant denies the legal conclusions contained in paragraph ö140ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

141. Defendant denies the legal conclusions contained in paragraph ö141ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

142. Defendant denies the legal conclusions contained in paragraph ö142ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

143. Defendant denies the legal conclusions contained in paragraph ö143ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

AS AND FOR A RESPONSE TO SEVENTH CLAIM
(Due Process)

144. Defendant repeats, reiterates and re-alleges the responses to the allegations set forth in paragraphs ö1ö through ö143ö above with the same force and effect as if fully set forth herein.

145. Defendant denies the allegations contained in paragraph ö145ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

146. Defendant denies the allegations contained in paragraph ö146ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

147. Defendant denies the allegations contained in paragraph ö147ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

148. Defendant denies the allegations contained in paragraph ö148ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

149. Defendant denies the allegations contained in paragraph ö149ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

150. Defendant denies the allegations contained in paragraph ö150ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

151. Defendant denies the allegations contained in paragraph ö151ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

AS AND FOR A RESPONSE TO SEVENTH CLAIM
(8TH Amendment)

152. Defendant repeats, reiterates and re-alleges the responses to the allegations set forth in paragraphs ö1ö through ö151ö above with the same force and effect as if fully set forth herein.

153. Defendant denies the allegations contained in paragraph ö153ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

154. Defendant denies the allegations contained in paragraph ö154ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

155. Defendant denies the allegations contained in paragraph ö155ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

AS AND FOR A RESPONSE TO NINTH CLAIM
(Failure to Intervene)

156. Defendant repeats, reiterates and re-alleges the responses to the allegations set forth in paragraphs ö1ö through ö155ö above with the same force and effect as if fully set forth herein.

157. Defendant denies the allegations contained in paragraph ö157ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

158. Defendant denies the allegations contained in paragraph ö158ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

159. Defendant denies the allegations contained in paragraph ö159ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

160. Defendant denies the allegations contained in paragraph ö160ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

AS AND FOR A RESPONSE TO TENTH CLAIM
(Monell)

161. Defendant repeats, reiterates and re-alleges the responses to the allegations set forth in paragraphs ö1ö through ö160ö above with the same force and effect as if fully set forth herein.

162. Defendant denies the legal conclusions contained in paragraph ö162ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

163. Defendant denies the legal conclusions contained in paragraph ö163ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

164. Defendant denies the legal conclusions contained in paragraph ö164ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

165. Defendant denies the legal conclusions contained in paragraph ö165ö of the First Amended Complaint and refers all questions of law to this Honorable Court.

166. Defendant denies the legal conclusions contained in paragraph ¶166 of the First Amended Complaint and refers all questions of law to this Honorable Court.

167. Defendant denies the legal conclusions contained in paragraph ¶167 of the First Amended Complaint and refers all questions of law to this Honorable Court.

168. Defendant denies the legal conclusions contained in paragraph ¶168 of the First Amended Complaint and refers all questions of law to this Honorable Court.

169. Defendant denies the legal conclusions contained in paragraph ¶169 of the First Amended Complaint and refers all questions of law to this Honorable Court.

170. Defendant denies the allegations contained in paragraph ¶170 of the First Amended Complaint and refers all questions of law to this Honorable Court.

171. Defendant denies the legal conclusions contained in paragraph ¶171 of the First Amended Complaint and refers all questions of law to this Honorable Court.

172. Defendant denies the legal conclusions contained in paragraph ¶172 of the First Amended Complaint and refers all questions of law to this Honorable Court.

173. Defendant denies the legal conclusions contained in paragraph ¶173 of the First Amended Complaint and refers all questions of law to this Honorable Court.

174. Defendant denies the legal conclusions contained in paragraph ¶174 of the First Amended Complaint and refers all questions of law to this Honorable Court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

The Court lacks personal jurisdiction over the Defendant as the plaintiff failed to properly effectuate service under CPLR §308.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

The Defendant has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

The First Amended Complaint fails to state a cause of action upon which relief may be granted against the Defendant.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

Defendant is entitled to any setoff applicable under the circumstances of this action.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

Defendant is entitled to immunity as he, at all times relevant to the First Amended Complaint, reasonably, properly and lawfully exercised his discretion as a public employee.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims in whole or in part are untimely.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

Plaintiff failed to satisfy mandatory conditions precedent to the instant action including but without limitation, those established under Sections 50-e, 50-h and 50-i of the New York General Municipal Law.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's injuries, if any, resulted solely from his own culpable or negligent conduct or the culpable or negligent conduct of others and were not the proximate result of action by the Defendant.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to punitive damages under the circumstances of this action.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

Defendant reserves the right to amend and/or supplement these affirmative defenses during the course of this litigation.

**FIRST CROSS-CLAIM AGAINST
DEFENDANT CITY OF NEW YORK**

175. At all times relevant in this action, all of the actions of the Defendant were performed as part of his duties and within the scope of his employment and the rules and regulations as a Correction Officer for the New York City Department of Correction.

176. Any damages sustained by the plaintiff at the time or place mentioned in the First Amended Complaint are embraced within the indemnification clause of Section 50-k of the New York State General Municipal Law.

177. Section 50-k(3) of the New York State General Municipal Law states:

The city shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in any state or federal court, or in the amount of any settlement of a claim approved by the corporation counsel and the comptroller, provided that the act or omission from which such judgment or settlement arose occurred while the employee was acting within the scope of his public employment and in the discharge of his duties and was not in violation of any rule or regulation of his agency at the time the alleged damages were sustained; the duty to indemnify and save harmless prescribed

by this subdivision shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee

178. Pursuant to 50-k(3), if it is shown that if the Defendant is in any way liable to the plaintiff based upon on the allegations in the First Amended Complaint, the Defendant is entitled to recover from the City of New York the full amount of any judgment which might be rendered against the Defendant.

**SECOND CROSS CLAIM AGAINST
DEFENDANT CITY OF NEW YORK**

179. Defendant repeats, reiterates and re-alleges the allegations set forth in paragraphs 175 through 178 with the same force and effect as if fully set forth herein.

180. Defendant has denied the material allegations asserted against him in the underlying action and has asserted affirmative defenses.

181. If the plaintiff sustained injuries and damages alleged in the First Amended Complaint, such injuries and damages were sustained by reason of negligence by the Defendant City of New York, its agents, servants and/or employees.

182. Therefore, if the injuries and damages alleged in the First Amended Complaint were caused as a result of negligence or wrongdoing other than by the plaintiff's own culpable conduct, then such damage is a result of the knowing, reckless and/or grossly negligent acts and omissions of the Defendant City of New York and its supervisory officials.

183. Consequently, if it is shown that the Defendant is in any way liable to the plaintiff based upon the allegations in the First Amended Complaint, Defendant is entitled to recover from the City of New York the full amount of any judgment that might be rendered against the Defendant.

WHEREFORE, Defendant **C.O. DAIN DEALLIE** respectfully demands:

- (a) Judgment dismissing the First Amended Complaint in its entirety;
- (b) Judgment on each of his cross-claims against the Defendant City of New York for the amount of any judgment that may be obtained herein by the plaintiff against the Defendant, or in an amount equal to the excess over and above his equitable share of any such judgment and
- (c) Together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October 25, 2016

Respectfully Submitted,

KOEHLER & ISAACS LLP

_____*/s/ Julie A. Ortiz*_____
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To: Law Firm of Ryan Lozar
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(310) 867-1562
Attn: Ryan Lozar, Esq.

New York City Law Department
Attorneys for Deft: City,
100 Church Street
New York, New York 10007
(212) 356-5055
Attn: Eviana Englert, Esq.

CERTIFICATE OF SERVICE

I certify that on October 25, 2016, I electronically filed the within **DEFENDANT DEALLIE'S ANSWER WITH CROSS-CLAIMS TO THE FIRST AMENDED COMPLAINT** with the Clerk of the Court using the CM/ECF system and have served the same *via ECF and regular mail* upon the following:

Law Firm of Ryan Lozar
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(310) 867-1562
Attn: Ryan Lozar, Esq.

New York City Law Department
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Attn: Eviana Englert, Esq.

Dated: New York, New York
October 25, 2016

_____*/s/ Julie A. Ortiz*_____
Julie A. Ortiz (JR-1817)